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Attorneys for Defendant,

UNITED HEALTHCARE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

DAVID BAIN, DAYNA BAIN and ALAINA  
BAIN, individuals, ,

Plaintiffs,

vs.

OXFORD HEALTH INSURANCE, INC. and  
UNITED BEHAVIORAL HEALTH, in their  
capacities as insurers, administrators, and  
fiduciaries of the Sagent Advisors Inc. Group  
Health Plan, an ERISA-regulated welfare plan,

Defendants.

CASE NO. 3:15-cv-03305-EMC

**STIPULATION AND PROPOSED ORDER  
TO WITHDRAW DEFENDANT'S  
OPPOSITION (DKT. 71) TO  
PLAINTIFF'S MOTION TO STAY (DKT.  
68) AND TO STAY THE LITIGATION**

Trial Date: None Set

Plaintiffs David Bain, Dayna Bain, and Alaina Bain (collectively, "Plaintiffs") and  
Defendants Oxford Health Insurance, Inc. and United Behavioral Health (collectively,  
"Defendants") do hereby stipulate and agree as follows:

**RECITALS**

WHEREAS, on April 4, 2017, Plaintiffs filed a Motion to Stay Action and Alternative  
Motion to Continue Summary Judgment Schedule ("the Motion for Stay"), which is presently  
scheduled to be heard on April 13, 2017 (*see* Dkt. 68);

WHEREAS, Plaintiffs' Motion requests, inter alia, that this Court stay the above-captioned

1 litigation until November 16, 2017, in light of the pending matters of *Wit v. United Behavioral*  
2 *Health*, N.D. Cal. Case No. 14-cv-02346-JCS, and *Alexander v. United Behavioral Health*, N.D.  
3 Cal. Case No. 14-cv-05337-JCS (collectively, “*Wit*”);

4 WHEREAS, Defendants filed an opposition on April 7, 2017 (*see* Dkt. 71), and Plaintiffs  
5 filed a reply on April 10, 2017 (*see* Dkt. 73);

6 WHEREAS, Defendants contend that if a judgment is entered with respect to the class  
7 currently certified in *Wit*, such judgment will preclude all of the claims currently asserted by  
8 Plaintiffs in the above-captioned action in their entirety, subject to any opt-out rights;

9 WHEREAS, Plaintiffs dispute Defendants’ contention for multiple reasons, including, but  
10 not limited to, the fact that the instant lawsuit includes multiple claims not raised or contemplated  
11 to be adjudicated in *Wit*, and that will not be resolved by *Wit*, including but not limited to claims  
12 concerning the adequacy and propriety of Defendant’s termination of benefits Plaintiff Alaina  
13 Bain’s residential treatment under ERISA and the ERISA claims regulation, claims for monetary  
14 benefits, claims for penalties under ERISA § 502(c), and otherwise (whereas, by contrast, *Wit* is  
15 expressly seeking only re-adjudication – not monetary benefits – of claims denied based on an  
16 allegedly improper Level of Care Guideline); and neither a judgment nor a settlement in a class  
17 action such as *Wit* resolves or produce a waiver or release of claims outside the scope of those  
18 actually litigated. *See National Super Spuds v. N.Y Mercantile Exchange*, 660 F.2d 9, 18 (2d Cir.  
19 1981); and

20 WHEREAS, despite their differing positions on these issues, all parties believe that the  
21 requested stay is appropriate;

22 **STIPULATION**

23 THEREFORE, in consideration of the foregoing recitals, Defendants hereby withdraw  
24 their opposition to Plaintiffs’ Motion to Stay, and Plaintiffs and Defendants hereby stipulate and  
25 agree that the above-captioned litigation should be stayed until November 16, 2017, as requested  
26 in Plaintiffs’ Motion for Stay.

27 The undersigned, on behalf of their respective clients, do so stipulate.

1           Respectfully submitted.

2 DATED: April 11, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

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By:           /s/ Greg L. Johnson          

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Greg L. Johnson

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Timothy J. Nally

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Attorneys for Defendants OXFORD HEALTH  
INSURANCE, INC. AND UNITED  
BEHAVIORAL HEALTH

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9 DATED: April 11, 2017

PHILIPS, ERLEWINE, GIVEN & CARLIN LLP  
CREITZ & SEREBIN LLP

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By:           /s/ Joseph Creitz          

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Joseph Creitz

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Co-Counsel for Plaintiffs DAVID BAIN, DAYNA  
BAIN and ALAINA BAIN

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**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: April 11, 2017

/s/ Greg L. Johnson  
Greg L. Johnson  
Attorneys for Defendants

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**ORDER UPON STIPULATION**

Pursuant to the stipulation of the parties and good cause appearing, the Court hereby stays the above-captioned litigation until November 16, 2017, as requested in the Motion to Stay (Dkt. 68).

It is so ORDERED. The 4/13/17 hearing is vacated. Further CMC is reset from 5/25/17 to 11/30/17 at 10:30 a.m. An updated joint CMC statement shall be filed by 11/22/17.

DATED: 4/13/2017

